

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish medical conditions causally related to the accepted July 9, 2019 employment incident.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 10, 2019 appellant, then a 56-year-old body repairman, filed a traumatic injury claim (Form CA-1) alleging that on July 9, 2019 he sustained a pinched nerve in his left shoulder when he lifted a Long Life Vehicle (LLV) door while in the performance of duty. He stopped work on that date and returned to modified duty on July 10, 2019.

In a July 12, 2019 duty status form report (Form CA-17), Dr. Cindy Catania, an osteopath Board-certified in family medicine, noted a July 9, 2019 date of injury. She indicated clinical findings of left shoulder impingement syndrome and left upper back muscle spasm.

In an October 17, 2019 development letter, OWCP informed appellant that it had reopened his claim for reconsideration of the merits because he had filed a notice of recurrence (Form CA-2a),<sup>4</sup> and that his claim would now be formally adjudicated. It advised him of the deficiencies of his claim and requested additional factual and medical evidence. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.

In an October 23, 2019 note, Dr. Cameron Best, a Board-certified orthopedic surgeon, advised that appellant was unable to work until his electromyography (EMG) study.

By decision dated November 27, 2019, OWCP denied appellant's claim. It accepted that the July 9, 2019 incident occurred as alleged and that left shoulder and cervical conditions had been diagnosed, however, it denied his claim finding that he had failed to establish that his medical conditions were causally related to the accepted employment incident.

Appellant subsequently submitted diagnostic testing reports. A July 12, 2019 left shoulder magnetic resonance imaging (MRI) scan revealed focal cortical irregularity of the acromion. A July 17, 2019 left shoulder x-ray examination report showed normal shoulder alignment and mild acromioclavicular degenerative changes. An October 17, 2019 cervical spine MRI scan demonstrated severe left foraminal stenosis at the C4-5 and C5-6 levels. An October 17, 2019 left shoulder MRI scan revealed marked supraspinatus and infraspinatus tendinosis, multifocal labral tearing, moderate acromioclavicular (AC) joint degenerative change with ganglion cyst formation, and mild teres minor atrophy.

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<sup>3</sup> Docket No. 20-1486 (issued March 16, 2021).

<sup>4</sup> On October 10, 2019 appellant filed a recurrence claim for disability from work commencing October 9, 2019 due to his July 9, 2019 employment injury.

In reports dated July 9 and 12, 2019, Dr. Catania noted that appellant was reevaluated for his injuries of left shoulder strain and left thoracic muscle spasm since July 8, 2019. She provided examination findings and noted diagnosis of left shoulder impingement syndrome, left shoulder muscle spasm, left shoulder acute pain, left shoulder strain, paresthesia and pain of the left extremity, and peripheral fatigue.

In a July 17, 2019 report, Dr. Jonathan E. Campbell, a Board-certified orthopedic surgeon, recounted appellant's complaints of left shoulder pain and numbness. He conducted an examination and diagnosed left forearm and hand numbness with possible ulnar neuritis.

In reports dated October 14 and 21, 2019, Dr. David K. DeDianous, Board-certified in physical medicine and rehabilitation, recounted appellant's symptoms of middle back and left shoulder pain. He provided examination findings and diagnosed shoulder pain, left arm paresthesia, tendinitis, and cervical pain and radiculopathy.

In a November 11, 2019 letter, Dr. R.J. Hammett, a chiropractor, indicated that he was treating appellant for injuries sustained at work. Appellant submitted additional chiropractic treatment notes dated October 29 through November 19, 2019.

On February 18, 2020 appellant requested reconsideration.

In a December 3, 2019 letter, Dr. Hammett discussed appellant's examination findings and noted that a cervical spine x-ray evaluation revealed loss of cervical lordosis, degenerative disc spaces at C5-6 with osteophytic spurring, and flexion malposition at C5 and C6. He diagnosed vertebral subluxation complexes of C1 and C5 with a loss of cervical lordosis, and cervical degenerative changes. In an undated addendum letter, Dr. Hammett noted that the injury was initially caused on July 9, 2019 when lifting an LLV door onto sawhorses and flipping them over.

By decision dated May 6, 2020, OWCP denied modification of November 27, 2019 decision.

Appellant, through counsel, appealed to the Board. By decision dated March 16, 2021, the Board affirmed OWCP's May 6, 2020 decision.<sup>5</sup>

On April 13, 2021 appellant, through counsel, requested reconsideration.<sup>6</sup>

In an undated addendum letter, Dr. Hammett indicated that he was clarifying his previous October 20 and December 3, 2019 reports and letters. He noted that appellant first presented in his office complaining of mid-back and neck pain radiating into his hands with numbness and tingling in the radial nerve dermatome. Dr. Hammett opined that the injury was initially caused

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<sup>5</sup> *Supra* note 3.

<sup>6</sup> Although counsel claimed to be filing a request for reconsideration from the Board's March 16, 2021 decision, OWCP is not authorized to review Board decisions. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. *See* 20 C.F.R. § 501.6(d). Although the March 16, 2021 Board decision was the last merit decision, the May 6, 2020 OWCP decision is the appropriate subject of possible modification by OWCP.

on July 9, 2019 when appellant lifted an LLV door at work. He recounted that appellant had informed him that this particular job was heavy and awkward because of the weight and angles that the doors have to be flipped.

By decision dated June 22, 2021, OWCP denied modification of the May 6, 2020 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>8</sup> that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>9</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>10</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.<sup>11</sup> There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>12</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.<sup>13</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported

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<sup>7</sup> *Supra* note 2.

<sup>8</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>9</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>10</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>11</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

<sup>12</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>13</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the employee.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish medical conditions causally related to the accepted July 9, 2019 employment incident.

Appellant submitted an addendum letter to the prior reports of Dr. Hammett, a chiropractor, who indicated that he was treating appellant for complaints of mid-back and neck pain radiating into his hands with numbness and tingling in the radial nerve dermatome. He opined that appellant's injury was initially caused on July 9, 2019 when he lifted an LLV door at work. Under FECA, the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>15</sup> The Board finds that Dr. Hammett did treat appellant's subluxation as demonstrated by x-ray to exist and has treated it with manual manipulation. Therefore, Dr. Hammett is considered a physician under FECA.<sup>16</sup> However, he has not provided a rationalized medical opinion establishing causal relationship between the diagnosed subluxation and the accepted July 9, 2019 employment incident.<sup>17</sup> Therefore, appellant has not met his burden of proof.

On appeal, counsel argues that Dr. Hammett provided clarification of his opinion on causal relationship and diagnosed subluxation based upon an x-ray scan. As explained above, however, Dr. Hammett is not considered a physician as defined under FECA.

As the medical evidence of record is insufficient to establish causal relationship between appellant's medical conditions and the accepted July 9, 2019 employment incident, he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>14</sup> *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>15</sup> Section 8101(2) of FECA provides that the term physician includes chiropractors only if the treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). *See J.D.*, Docket No. 19-1953 (issued January 11, 2021); *T.T.*, Docket No. 18-0838 (issued September 19, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>16</sup> *See id.* The Board notes that it did not properly characterize Dr. Hammett as a physician on prior appeal; however, that was harmless error as he has not provided a rationalized medical opinion establishing causal relationship.

<sup>17</sup> *See supra* note 13.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish medical conditions causally related to the accepted July 9, 2019 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board